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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

REN ARNELL BELLIDO,

Defendant and Appellant.

F078275

(Super. Ct. No. 2065106)

OPINION

APPEAL from a judgment of the Superior Court of Stanislaus County.

Thomas D. Zeff, Judge.

David L. Polsky, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez, Amanda D. Cary, and Lewis A. Martinez, Deputy Attorneys General, for Plaintiff and Respondent.

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INTRODUCTION

Defendant Ren Arnell Bellido was convicted of second degree murder (Pen. Code, § 187, subd. (a)),¹ with the special allegation that he personally used a deadly and dangerous weapon (§ 12022, subd. (b)), in relation to the death of Marcus M.² In bifurcated proceedings, the court found true the allegations that Bellido suffered a prior serious felony conviction that also constituted a strike. (§§ 667, subds. (a)-(i), 1170.12, subds. (a)-(d).) The court dismissed the prior strike pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, and sentenced Bellido to an indeterminate term of 15 years to life for the murder, plus a determinate term of five years for the prior serious felony conviction and one year for the weapon use enhancement.

On appeal, Bellido contends the evidence was insufficient to disprove he acted in imperfect self-defense, and his murder conviction therefore must be reduced to voluntary manslaughter. He also argues, and the People concede, the matter must be remanded for the court to consider whether to strike the prior serious felony enhancement.

We find the evidence sufficient to support the conviction for second degree murder. We accept the People's concession and remand for the court to consider whether to strike the prior serious felony enhancement. In all other respects, we affirm.

FACTUAL BACKGROUND

The People's Case

On June 23, 2016, Tina S. lived on a "ranchette" in Oakdale with her husband and three children, including her daughter Angela. Tina's friend's cousin, Marcus M., was living on the property in a camping trailer. Angela's friend, Tyler R., had stayed over the

¹ Undesignated statutory references are to the Penal Code.

² Pursuant to California Rules of Court, rule 8.90, we refer to some persons by their first names or initials. No disrespect is intended.

night before in Tina's living room. Bellido also stayed overnight on the property and had personal property stored there in a barn.

Around 9:00 a.m., Marcus came to the front door of Tina's residence. Tina told Marcus that he needed to leave the property and that she would gather his belongings for him to retrieve later. Tina pointed for Marcus to leave and he slapped her hand before turning to walk away toward the street. While walking away, Marcus turned toward Bellido and charged at him, tackling him to the ground. Tyler saw Marcus "choking [Bellido] out" and believed Marcus had the upper hand in the fight. However, Tina testified that neither man had the upper hand. Eventually, Marcus ended up beneath Bellido. Tina kicked at the men to stop the fighting. Marcus said he would let go if Bellido did, and they ceased wrestling. Tina told Marcus to leave and to come back later, and she told Bellido to go to the barn. Marcus walked off toward the street in the direction of a house next door, saying something to the effect of, "I'm going to call the cops so I can get my stuff."

Approximately 15 to 20 minutes later, Tina, Angela, and Tyler went to gather Marcus's belongings from the camping trailer. Tina saw Bellido walking around the barn and the trailer, bringing boxes from behind the trailer to help pack Marcus's belongings. Tina told Bellido that his help was not needed and instructed him to return to the barn. Tina, Tyler, and Angela went inside the trailer. Tina did not know what Bellido did at that point.

After a few minutes, Tyler saw Marcus approaching the trailer from the direction of the neighbor's house, looking angry. He saw Bellido toward the back of the camping trailer. Tyler told Marcus to stay back, then turned back into the trailer to continue packing. At that point, Bellido was right outside the door of the camping trailer. Marcus did not stop walking. Approximately 30 seconds later, Tyler heard Marcus say, "Are you really just going to stand there and do nothing?" Tyler looked outside and saw Marcus

holding his chest. Bellido was near the back of the horse trailer. Marcus said, “He just stabbed me.”

Tina came out of the trailer and said, “Are you fucking kidding me?” Bellido stated, “Yeah. He was coming at me.” Tina saw Bellido holding a steak knife and told him to drop it. Bellido threw the knife at a support beam in the barn and it fell to the ground. Marcus was writhing on the ground. Tina saw that he had an incision in his upper chest, and she applied pressure to it and called 911. Tina asked Bellido, “You did this?” Bellido stated, “Yes. He was coming at me.” Tyler also asked Bellido whether he stabbed Marcus, and Bellido responded, “Yeah, I did. He came up to me.”

Marcus died at the scene from a single stab wound that penetrated his ribs, left lung, and heart. His body was approximately 40 feet from the camping trailer, 26 feet from the foot of the horse trailer, and 12 and a half feet from the property line. It is undisputed that Marcus was unarmed at the time of the altercation.

Deputies arrived on scene at approximately 9:17 a.m. Bellido was compliant and was arrested. He had abrasions on his forehead and blood on his hands. The deputies found a knife inside the barn behind an animal cage, and it appeared to have blood on the blade. DNA from the bloodstain contained a profile for a major contributor and a minor contributor. The major contributor was consistent with Marcus’s DNA profile, and the minor contributor was consistent with Bellido’s DNA profile. DNA from the handle of the knife also contained a profile for a major contributor and a partial profile for a minor contributor. The major contributor was consistent with Bellido’s DNA profile; there was insufficient information regarding the minor contributor to determine the source of the DNA.

Bellido was interviewed by Stanislaus County Sheriff’s Detective David Hickman and admitted stabbing Marcus. Bellido also revealed the following. He received the abrasions on his forehead during his earlier altercation with Marcus, in which Marcus “kicked his ass.” Bellido went out to the horse trailer to protect Tina and Angela, who he

described as family. He took a knife from the barn and leaned against the horse trailer, holding the knife in both hands and tapping it on the trailer in a “show of force.” Bellido believed a show of force was necessary to protect Tina and Angela based on his earlier altercation with Marcus. When Marcus approached, Bellido tapped the knife on the horse trailer and stared Marcus down, trying to act macho. Marcus said, “Oh, you want to stab somebody? Stab me.” Bellido interpreted Marcus’s statement as encouragement, like challenging someone to jump off a cliff. By this point, Bellido had walked from the horse trailer out toward the roadway. Marcus lunged toward Bellido, with one hand closed almost in a fist and the other hand open. Bellido moved forward. He did not intend to stab Marcus, only to push him away.

Bellido at one point stated he believed he stabbed Marcus in the shoulder, and at another point stated he stabbed Marcus in the chest. He demonstrated several times the way he stabbed Marcus. In one instance, he demonstrated putting his arm forward, and in another he demonstrated using an overhand motion. At the time of the interview, Bellido did not think he made the right decision. He stated that he attempted to hide the knife because he thought that the crime would be reduced or would not constitute a crime if the knife was not found. He did not know at the time he hid the knife that he had fatally wounded Marcus.

Defense Case

Tina’s neighbor testified that Marcus came to her house on the morning of the incident and asked to use her phone. He was distraught and barefoot, and claimed to have walked there from the hospital in town, a distance of about three miles. Marcus used the neighbor’s phone to call the sheriff’s nonemergency line, where he reached Stanislaus County Deputy Sheriff Francisco Soria at approximately 9:00 a.m.. Marcus was irate and stated that he needed to retrieve his backpack and \$600 from people he was staying with. Marcus reported that his belongings were in Oakdale and provided a street name, but declined to give a precise address or any names. Soria eventually terminated

the call. Marcus then left the neighbor's house, walking toward Tina's property. The neighbor heard a woman's voice yell, "Get the [fuck] out of here."

Minutes later, sheriff's dispatch received a call regarding the instant stabbing.

A recording of Bellido's interview with Detective Hickman was played for the jury during the defense case.

DISCUSSION

I. Sufficiency of the Evidence

Bellido contends the prosecutor did not present sufficient evidence to disprove Bellido was in actual fear of imminent harm when he stabbed Marcus, as required to sustain a conviction for murder. He therefore contends the conviction must be reduced to voluntary manslaughter. We find the evidence sufficient to support the conviction.

A. Applicable Law

Criminal homicide is separated into two classes, murder and manslaughter. (*People v. Rios* (2000) 23 Cal.4th 450, 460 (*Rios*). Murder is the unlawful killing of another with malice aforethought. (§ 187, subd. (a).) "Malice may be either express or implied." (*People v. Blakeley* (2000) 23 Cal.4th 82, 87 (*Blakeley*).) Express malice requires "a deliberate intention unlawfully to take away the life of a fellow creature." (§ 188; see *Blakeley*, at p. 87.) Implied malice involves " 'an intentional act, the natural consequences of which are dangerous to life, which act was deliberately performed by a person who knows that his conduct endangers the life of another and who acts with conscious disregard for life.' " (*Blakeley*, at p. 87.)

In the absence of malice, an intentional, unlawful killing constitutes voluntary manslaughter, rather than murder. (*Rios, supra*, 23 Cal.4th at p. 460; see § 192.) Thus, a defendant who intentionally and unlawfully kills in a " 'sudden quarrel or heat of passion' " or under " 'the unreasonable but good faith belief in having to act in self-defense' " lacks malice and is guilty instead of voluntary manslaughter. (*Rios*, at p. 460.) Where the issue of provocation or imperfect self-defense is "properly presented," the

People must prove beyond a reasonable doubt “that these circumstances were *lacking* in order to establish the murder element of malice.” (*Id.* at p. 462.)

“The Due Process Clause of the Fourteenth Amendment denies States the power to deprive the accused of liberty unless the prosecution proves beyond a reasonable doubt every element of the charged offense” (*Carella v. California* (1989) 491 U.S. 263, 265, citing *In re Winship* (1970) 397 U.S. 358, 364), and the verdict must be supported by substantial evidence (*People v. Zamudio* (2008) 43 Cal.4th 327, 357). In reviewing the sufficiency of the evidence, “ ‘we review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ ” (*People v. Cravens* (2012) 53 Cal.4th 500, 507 (*Cravens*).) “We must presume in support of the judgment the existence of every fact that the trier of fact could reasonably deduce from the evidence.” (*People v. Medina* (2009) 46 Cal.4th 913, 919.) “The conviction shall stand ‘unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].” ’ ” (*Cravens*, at p. 508.)

B. Analysis

Voluntary manslaughter under a theory of imperfect self-defense requires that the defendant acted in actual, but unreasonable, fear of imminent death or great bodily injury. (*People v. Stitely* (2005) 35 Cal.4th 514, 551.) Here, evidence was presented which could support such a theory. Bellido told Detective Hickman that he feared for his life and stabbed Marcus after Marcus lunged at him. However, the jury was free to reject Bellido’s version of the events in whole or in part, and the jury was not required to draw all possible inferences in his favor. Indeed, the jury apparently rejected Bellido’s claim of imperfect self-defense, finding him guilty of murder despite being properly instructed on the offense of voluntary manslaughter under a theory of imperfect self-defense.

Bellido argues that, in the absence of his claim of fear, there was no evidence to establish how the stabbing occurred, and thus no evidence that the stabbing was committed with malice, rather than “for self-protection.” However, Bellido admitted to Detective Hickman that he took a knife to the horse trailer to appear “macho” and to make a show of force. When Marcus arrived, appearing angry, Bellido walked out toward him. Bellido understood Marcus’s statement, “Oh, you want to stab somebody? Stab me,” as encouragement, rather than as a threat. And, although Bellido at one point stated he intended only to push Marcus away, he also demonstrated to Detective Hickman how he stabbed Marcus using an overhand motion. Furthermore, Bellido knew Marcus was unarmed. This evidence, when viewed in the light most favorable to the judgment, was sufficient for a reasonable juror to conclude that Bellido acted with at least implied, if not express malice, rather than under an unreasonable but actual fear of death or great bodily injury.

In sum, the jury was properly instructed on the lesser included offense of voluntary manslaughter under a theory of imperfect self-defense. The verdict demonstrates the jury rejected Bellido’s claim that he was in actual fear and determined he acted with malice in killing Marcus. Substantial evidence undermined Bellido’s claim of imperfect self-defense and supported the jury’s determination that he acted with malice.

II. Prior Serious Felony Conviction

Defendant’s sentence includes a five-year enhancement for having suffered a prior serious felony conviction within the meaning of section 667, subdivision (a). Defendant and the People agree that the matter must be remanded for the trial court to consider striking this enhancement pursuant to the discretion granted by Senate Bill No. 1393.

Effective January 1, 2019, Senate Bill No. 1393 (2017-2018 Reg. Sess.) removed the restrictions on striking prior serious felony enhancements contained in sections 667, subdivision (a)(1) and 1385. (Stats. 2018, ch. 1013, §§ 1-2.) Our Supreme Court has

held that Senate Bill No. 1393 applies retroactively to cases, such as Bellido’s, in which the judgment is not yet final. (*People v. Stamps* (June 25, 2020, S255843) __ Cal.5th __ [2020 WL 3525176, p. *5]; see *People v. Vieira* (2005) 35 Cal.4th 264, 306 [a judgment is final for retroactivity purposes when all direct appeals have been exhausted and a petition for writ of certiorari in the United States Supreme Court has been denied or the time for filing such a petition has been exhausted].) The People concede that the record does not demonstrate that the trial court would not have exercised its discretion to lessen the sentence. (See *People v. Johnson* (2019) 32 Cal.App.5th 26, 69 [remand unnecessary where “the record shows that the superior court ‘would not ... have exercised its discretion to lessen the sentence’ ”].) Accordingly, the People concede the matter must be remanded for the trial court to consider whether to strike the serious felony enhancement. We accept the People’s concession.

DISPOSITION

The matter is remanded for the trial court to determine whether to exercise its discretion to strike the prior serious felony enhancement under sections 667, subdivision (a)(1) and 1385, subdivision (b), as amended by Senate Bill No. 1393 (Stats. 2018, ch. 1013, §§ 1-2), and, if appropriate following exercise of that discretion, to resentence Bellido accordingly. In all other respects, the judgment is affirmed.

SNAUFFER, J.

WE CONCUR:

LEVY, Acting P.J.

POOCHIGIAN, J.